IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2006

CORAM

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

C.M.A. No. 114 of 1998

The New India Assurance
Company Limited, No.46,
Moore Street, Madras-600 001. ... Appellant/Second Respondent

Versus

1.G.Vijaya Kandiban
2.S.Jayapal ... Respondents/Petitioner & first respondent

The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 7th day of August 1997 made in M.C.O.P.No.2021 of 1994 on the file of Motor Accident Claims Tribunal (IV Judge, Court of Small Causes), Madras.

For Appellant : Mr. S.Manohar
For Ist Respondent : Mr. Mohan Choudary

JUDGEMENT

The New India Assurance Company Limited, Madras has filed this Civil Miscellaneous Appeal challenging the decree and judgement of the Motor Accidents Claims Tribunal (IV Judge of Small Causes) Madras made in MCOP No.2021 of 1994 dated 07-08-1997. In respect of the injuries, the first respondent/claimant has filed a petition for compensation claiming a sum of Rs.1,50,000/-. In support of his claim, he himself got examined as PW1. One Mr.Amaladoss, the Sub-Inspector of Police, Investigating Department was examined as PW2 and Dr.N.Saichandran was examined as PW3, besides marking Exhibits P1 to P7. On the side of the respondents, no oral evidence was let in and an insurance policy was marked as Ex.R1. The Tribunal, after analysing the oral and documentary evidence and after holding that the accident was due to negligence of the driver of the vehicle in question, passed an award for a sum of Rs.71,500/- with 12 percent interest per annum from the date of petition till the date of deposit. Since the Appellant/Insurance company

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obtained permission to contest the claim petition on all grounds under Section 170 of Motor Vehicles Act 1988, the appellant has to canvass the finding relating to the quantum determined by the Tribunal also.

2.Before the Tribunal, it is the case of the respondent/claimant that on 16.6.1994 at 2 p.m. when he was driving his motor cycle bearing registration No.TMP.797 in Madavaram Highway, slowly and carefully, the van bearing registration No.TN21 Y 0579, which was being driven by its driver carelessly and negligently, came in the opposite direction in the same Highway and collided against the motor cycle, on account of which, the claimant sustained grievous injuries. The Tribunal held that the first respondent, the owner of the van and its Insurer, the second respondent, the Insurance Company are vicariously and statutorily liable to pay the compensation of Rs.1,50,000/-. In support of his claim, the injured got himself examined along with one Amaladass, the Sub-Inspector of Police, Investigation Department and Dr. N.Saichandran and the wound certificate and the hospital receipts of Star Bone and Joint Centre were marked as Ex.P1 and P2. The first information report was marked as Ex.P3, Sketch was marked as Ex.P4, Discharge summary was marked as Ex.P5, and Disability certificate and X-ray were marked as Exs. P6 and P7 respectively. Based on the evidence, the first respondent/claimant has made the claim for compensation.

3.The first respondent before the Tribunal was called absent and set exparte. The second respondent, who is the appellant herein, has filed a counter and it was contended that the occurrence of the accident has been denied and only on 20.9.1994, the accident had been reported for the purpose of claim. It is for the claimant to prove that the accident had taken place at 2.00 p.m. in the evening of 16.6.94 and it had occurred only due to the negligence of the driver of the van bearing registration No.TN21 Y 0579. It was also contended that for the injuries sustained in the accident took place on 16.6.1994, he only took up treatment in the hospital on 17.06.1994. Though the injuries were sustained in the accident on 16.6.1994, he has chosen for treatment only on 17.6.1994 for the best reasons known to him. The second respondent before the Tribunal has also questioned about the age, occupation, income, date of accident, time, place, name of the vehicle's owner, name of the driver and the insurance agency and address respectively. It was further contended that the claimant had violated provisions of the Motor Vehicles Act under the terms and conditions of the insurance policy. Hence, the respondent insurance company need not pay any compensation. It was also contended that the injuries sustained in the accident, treatment undergone by him and the expenses incurred

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for the treatment have been denied. However, the claim made is excessive and hence the insurance company prayed the Tribunal to dismiss the petition with costs.

4.The Insurance Company also filed an additional counter, wherein it was contended that the van bearing registration No.TN21 Y 0579 was not involved in the accident. Since the Petitioner/claimant, and the first respondent are friends and for the reason that they wanted to receive compensation, it had been wrongly stated that the accident had occurred owing to the van bearing registration No.TN21 Y 0579. Therefore the insurance company has denied the claim and prayed the Tribunal to dismiss the petition.

5.The Tribunal, after proper enquiry and on analysing the oral and documentary evidence, has passed an award, fixing the compensation of Rs.71,500/- with 12% interest per annum. Aggrieved by the award of the Tribunal, the Insurance Company has filed the present appeal.

6.Heard Mr.S.Monohar, the learned counsel appearing for the appellant/ Insurance Company and Mr.V.Mohan Chowdry for first respondent/claimant. The second respondent herein, who was absent and set exparte by the Tribunal, did not appear before this Court also.

7.Mr.S.Manohar, the learned counsel appearing for the appellant herein in his submission has contended that the Tribunal is wrong in holding that the accident was caused by the vehicle bearing registration No.TN21 Y 0579 and has also failed to show that there was a collusion between the first respondent/claimant and the second respondent, the owner of the vehicle. Since both the respondents herein are close friends and only with an intention to help first respondent to get compensation from the insurer of the vehicle, the respondents have colluded with each other and implicated the vehicle bearing registration No.TN21 Y 0579 for the claim, though such accident was not caused by the said vehicle. The appellant herein contended that the first respondent/claimant did not disclose the fact that actually which vehicle caused the accident and it could be seen from the wound certificate,(Ex.P1) issued by the Government Stanley Hospital that the first respondent was injured in a collision between his motor cycle and an unknown vehicle. It is specifically contended that though the accident took place on 16.6.1994, for the first time only on 20.09.1994, three months after the accident, a complaint has been lodged to the police to implicate the vehicle bearing registration No.TN21 Y 0579 and there was no reason for the delay in preferring the police complaint in time and also there was no explanation for

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not informing the Hospital authorities about the vehicle, which caused the accident. It is specifically stated that in the F.I.R. (Ex.P3), the registration number of the vehicle, which caused the accident, was noted down by his friend who travelled with the first respondent in the motor cycle at the time of the accident. If really any friend of the first respondent was also present at the time of the accident as per F.I.R, the first respondent herein could have examined that friend also as a witness to prove his case.

8.The appellant herein has questioned the correctness of the findings of the Tribunal that if the second respondent is a close friend of the first respondent herein, there could have been no difficulty for disclosing such a fact and the vehicle's registration number to the hospital authority as well as to prefer a police complaint at the earliest point of time. Whereas the Tribunal has given a finding that the negligence is on the part of the driver of the vehicle bearing registration number TN21 Y 0579. The learned counsel for the appellant has also pointed out that only to facilitate the first respondent to get compensation, the vehicle bearing registration No.TN21 Y 0579 has been implicated in the F.I.R. and the second respondent, only for such purpose of helping his friend to gain monetarily, a fortune out of a misfortune, has voluntarily pleaded guilty of charges before the Criminal Court and remained exparte before the court below. Therefore, the Tribunal ought not to have placed any reliance on the voluntary plea of guilt of the second respondent before the criminal court in the findings in respect of the negligence on the part of the driver of the vehicle bearing registration No.TN21 Y 0579.

9.The learned counsel appearing for the appellant brought to the notice of this Court that in the Exhibit P1 dated 17.6.1994 at 7.15 a.m. in which in the column "Police instructed" it was shown as 'Yes' and in which it is seen that "alleged to have sustained injury while pillion riding on a Motor Cycle (Number not known) while collided with a Mahendra Van (No. Not known) at 17-H, Road, Madhavaram and also pointed out in the discharge summary in Ex.P5. Ex.P2 series, hospital receipts, showing the treatment of the claimant as an inpatient, were obtained by him in June,1994 and he has deposed in the cross-examination as follows:

"விபத்தில் சம்பந்தப்பட்ட வண்டியின் உரிமையாளரைத் தெரியும், எனக்கு அவரை 10 ஆண்டுகளாகத் தெரியும் அவர் என்னுடைய நெருங்கிய நண்பர் என்றால் அது சரி, அசல்

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மனுவில் உரிமையாளர் குறித்து விவரங்களை காலம் 22 (iii) ல் No என்று குறிப்பிட்டுள்ளேன் என்றால் அது சரியல்ல. விபத்தில் சம்பந்தப்படாத வண்டியை எனக்கு சாதகமாக என் நண்பருடைய வண்டி எண்ணை குறிப்பிட்டு தவறான வழக்கை தொடர்ந்து நானும் என் நண்பரும் சேர்ந்து பணம் பெற முயற்சி செய்கிறோம் என்றால் அது சரியல்ல."

Based on the evidence, the learned counsel appearing for the appellant has contended that the second respondent is the owner of the vehicle and he is known to the first respondent for the past 10 years and it is clear that there was a collusion between the first respondent and the second respondent.

10.On the contrary, the learned counsel for the first respondent/claimant has contended that the claimant has deposed in his evidence that when he was riding his motor cycle bearing registration No.T.M.P.797 on the night of 16.6.1994 and in the morning of 17.6.1994 at 2.00 hours in the Perambur Madhavaram Highway and was proceeding from Madhavaram to Perambur, the Mahindra van bearing registration No. TN21 Y 0579, which came in the opposite direction, collided against him and that he sustained injuries. The learned counsel for the respondent/claimant also contended that the Ex. P3, the first information report in Cr.No.3712/94, Ex. P4, the sketch showing the manner of accident and the place of occurrence and the evidence of Amalaraj, the Sub Inspector of Police, Investigating Department, are clinching evidence for the involvement of the vehicle in the accident. It is also seen that after investigation was over, the charge sheet has been filed against one S.Jayapaul, the van driver, before the Chief Metropolitan Magistrate Court in C.C.No.7789 of 1994 under Section 338 IPC and Section 179 of the Motor Vehicles Act. The van driver had admitted his offence on 8.5.1995 and had paid a fine amount of Rs.500/-. Therefore, the fact that the person had been implicated in a criminal case and convicted and fined itself is a piece of evidence to show that there was no collusion and no person can voluntarily go for admitting the guilt of any criminal offences. This is an imagination, a far-reaching one, when a person is going to be convicted and fined in his future. It is also seriously contended that the Medical Officer, who was examined as PW3 on 23.6.1998, had deposed that the claimant has sustained grievous injuries in the right knee and owing to the malunion of two bones, there was contusion of muscles and sustained reduction in the movement by 20 degree and that the partial permanent

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disability to 35% as per the exhibit P6 and P7. Therefore, the learned counsel for the first respondent has contended that the findings of the Tribunal that the negligence on the part of the van driver as per the Motor Vehicles Act was the cause for the accident and the injuries suffered and that negligence is on the part of the driver based on which the quantum awarded by the Tribunal is found to be proper and there are no reasons to disbelieve the same and prayed for dismissing the appeal.

11.The learned counsel for the appellant in support of his contention has relied on a decision of the Supreme Court reported in 2000 ACJ 1032 (United India Insurance Co.Ltd Vs. Rajendra Singh and others) and also placed reliance of the order of this Court reported in 2004(2) TNMAC 101 (N.Sathidevi and others vs. V.Giridharan) . On the side of the respondent/claimants, reliance was placed on decision of the Supreme Court reported in AIR 1972 SC 283 dealing with the object of first information report from the point of view of the informant in a case of Hasib vs. The State of Bihar, and also placed reliance on the decision of the Supreme Court reported in AIR 1980 SC 1354 (N.K.V.Bros. (P) Ltd. vs. M.Karumal Ammal and others), 2005 ACJ 520 (Manoj vs. Samundar Singh and others), the decision of the Supreme Court reported in 1999 ACJ 10 (Halen C.Rebello and others vs. Maharashtra State Road Transport Corporation and another), 1995 ACJ 1158 Karnataka High Court decision (Bantu and another vs. Annappa and others), in the Punjab and Haryana High Court a decision reported in 1994 ACJ 432 (Virat Sama vs. Mohan Lal and others) and by the same Court in a case reported in 1994 ACJ 1177 (Kamla Devi and others vs. Balwinder singh and another) .

12. I have considered the rulings on various decisions cited by the learned counsel appearing on either side. In the case of United India Insurance Company Ltd vs. Rajendra Singh and others reported in 2000 ACJ 1032, it was held in paragraph 15 and 16 as follows:

> "15.Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high decree, cannot be foreclosed in such a situation. No court or Tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wrongled through fraud of misrepresentation of such a dimension as would affect the very basis of the claim.
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> 16) The allegation made by the appellant insurance company, that claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further probe into the

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matter, for, the said allegation has not been specifically denied by the claimants when they were called upon to file objections to the applications for recalling of the awards. Claimants then confined their resistance to the plea that the application for recall is not legally maintainable. Therefore, we strongly feel that the claim must be allowed to be resisted, on the ground of fraud now alleged by the insurance company. If we fail to afford to the insurance company an opportunity to substantiate its contentions it might certainly lead to serious miscarriage of justice."

13.It is made clear from the above rulings that the order can be recalled on the basis of the newly discovered facts amounting to fraud or misrepresentation of such a dimension as would affect the very basis of the claim. In the circumstance of the case as seen from the documentary evidence that the involvement of the vehicle in the accident and the injuries sustained are based on material evidence and also from the findings of the criminal court, when such is the situation, if there is a high degree of fraud or misrepresentation, the Court can have power to recall the Tribunal order and that situation would not arise in this case.

14.Then, in the case reported in 2004 TNMAC 101, it has been held in paragraph 22 as follows:

" From the above decisions, it is clear that the confession made before the Criminal Court is an admission against his interest and the same has to be taken into account in rendering a decision on the relative stands taken by the parties in the controversy". According to the above said decisions, if the party who made admission before the criminal court wants the Tribunal not to rely on it, he has to explain, as to why and under what circumstances, such evidence was given before the Criminal Court contrary to the real fact"

15.The above ruling has given a clear position of law that the admission made in the criminal proceedings cannot be relied on. But the case of the claimant has to be established independently before the Tribunal. In the present case, except admission made before the Criminal Court, absolutely there are no material evidence to show that the claimant has established independently and therefore the above decision has been followed by the Tribunal. On the other hand the learned counsel for the

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respondent/claimant has relied on various decisions as cited supra.

16.In the decision of the Supreme Court reported in AIR 1980 S.C. 1354, it was held in paragraph 3 as follows:

> "3.Road accidents are one of the top killers in our country, specially when truck and bus drivers operate noeturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitun Accidents Tribunals must take special care to see that innocent victim do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with. It thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their "neighbour". Indeed, the State must seriously consider no-fault liability by legislation."

17.Also in the decision reported in AIR 1972 SC 283, it was held as follows:

> " The object of first information report from the point of view of the informant is to set the Criminal Law in motion. From the point of view the investigating authorities it is to obtain information about the alleged Criminal activity so as to able to take suitable steps for tracing and bringing to book the guilty party. The report does not constitute substantive evidence though it is important as conveying the earliest information about the occurrence. It can be used only as a previous statement for the purpose contemplated under Section 157 or Section 145 of the Evidence Act that is for corroborating or contradicting its maker and not of other witnesses."

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18.Further reliance has been placed on the decision reported in 2005 ACJ 520 where it was held in paragraph 3 that:

> "3. After recording of evidence the Tribunal disbelieved Manoj Malviya, AW 1 and Mansingh, AW3 and relying upon the statement of Samundar Singh, DW1 held the claim not proved. Main ground taken had been that the matter was not reported to police immediately and first information report was not lodged by the appellant for a year. Thus the claim was dismissed.
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> 4. Both the advocates heard. The learned advocate for appellant has vehemently argued that the claim could not have been dismissed merely because no reporting had been there. It is noteworthy that both Manoj Malviya, AW1 and Mansingh, AW3 had proved the accident and Samundar Singh, NAW1 had hesitatingly admitted that there had been an accident while he was driving the jeep and the claimant-appellant had been seriously injured in such accident. In view of such admission the depositions of Manoj Malviya, AW1 and Mansingh, AW3 could not be disbelieved by the learned Tribunal below. It is true that first information report, a report to police, is a very important corroborating and supporting the evidence and late first information report may effect the reliability of a witness yet it is not substantive piece of evidence. (Laxmi Gontiya v. Nand Lal Tahalramani, 1999 ACJ 241 (MP) and Nasib v. State of Bihar, AIR 1972 SC 238). However, even if such first information report is late the court can still act and rely on depositions on oath of the eye-witnesses. It is noteworthy that there has been ample supporting evidence in the shape of medical bills/prescriptions Exh. P-5 dated 19.6.1997 Exh. P-2 dated 10.10.1997 and Exh.P-3 dated 1.12.1997 with several bills and vouchers for purchase of medicines, etc., which go to show that the appellant had been injured on 18.6.1997 and was being treated in hospital. Hesitating admissions of Samundar Singh, respondent No.1 have been clinching on the point. The theory of violence in the written statement by Samundar Singh, the respondent No.1 and his father has been given up

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in evidence. It is noteworthy that there had been no report of any quarrel or inebriated orgy wherein appellant could have sustained injuries. Thus, arguments of learned advocate for appellant had force in it. It is well proved on evidence on record that the appellant had been injured in a vehicular accident. Certainly, rule of res ipsa loquitur applied to the present case and Samundar Singh, respondent No.1 had been guilty of negligence in driving the jeep."

19.In the decision of the Supreme Court reported in 1999 ACJ 10, it was held in pargraph 38 as follows:

" 38. As we have observed the whole scheme of the Act, in relation to the payment of compensation to the claimant, is beneficial legislation, the intention of the legislature is made more clear by the change of language from what was in Fatal accidents Act, 1855 and what is brought under Section 110-B of the 1939 Act. This is also visible through the provision of Section 168(1) under the Motor Vehicles Act, 1988 and Section 92-A of 1939 Act which fixes the liability on the owner of the vehicle even on no fault. It provides where the death or permanent disablement of any person has resulted from an accident inspite of no fault of the owner of the vehicle, an amount of compensation fixed therein is payable to claimant by such owner of the vehicle. Section 92-B ensures that the claim for compensation under Section 92-A is in addition to any other right to claim compensation in respect whereof under any other provision of this Act or of any other laws for the time being in force. This clearly indicates the intention of the legislature which is conferring larger benefit to the claimant. Interpretation of such beneficial legislation is also well settled. Whenever there be two possible interpretations in such statute then the one which subserves the object of legislation, viz., benefit to the subject should be accepted. In the present case, two interpretations have been given of this statue, evidenced by two distinct sets of decisions of the various High Courts. We have no hesitation to conclude that the set of decisions, which applied the principle of no

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deduction of the life insurance amount, should be accepted and the other set, which interpreted to deduct, is to be rejected."

20.Also in the same proposition of law, it was relied on by the respondent/claimant that the decision reported in 1995 ACJ 1158, wherein it has been held in paragraph 5 as follows:

"5. As far as this aspect of the matter is concerned, though I must accept that the submission canvassed by the respondents' learned advocate is faultless, the position that remains is that as far as the present proceeding is concerned, none of the witnesses were contradicted by the first information report nor have the contents of that document been put to them subsequently even though the first information report, was produced in these proceedings. This aspect of the matter is of paramount importance because the witnesses ought to have been given an opportunity of stating before the court as to which of the two was in fact the correct version. We have the sworn testimony in the present proceedings that the deceased was walking on the side of the road and if this version is to be discarded, it can only be done after confronting the witness with a statement that mentions otherwise and establishing as to which of the two versions is correct. To this extent, therefore, on the basis of the production of the first information report the finding that there was contributory negligence on the part of the deceased is erroneous and the same will have to be set aside."

21.Further decision of the Punjab and Haryana High Court reported in 1994 ACJ 432, it was held in paragraph 7 as follows :

"7. The other ground taken by the Tribunal for not awarding compensation is that in the police report, negligence has not been attributed to auto-rickshaw driver. I am no inclined to subscribe to the view taken by the Tribunal as in accident cases, first information report is often lodged in a haste and the same cannot be a substitute for the evidence giving exhaustive version of the

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occurrence. The statements before the Tribunal are made on solemn affirmation, whereas the F.I.R. is never lodged on solemn affirmation."

22.In the same High Court in a Division Bench Decision reported in a case of Kamla Devi and others vs. Balwinder Singh and another paragraphs 5 & 6 reads as follows:

"5. Learned counsel for the appellants has vehemently argued that the findings of the Tribunal as well as of the learned single Judge cannot be sustained. It was contended that when a witness has denied a fact on oath, mere confronting him with respect to something recorded by a third person, by itself is not sufficient to disbelieve the witness, particularly when the scribe of the F.I.R. has not been examined. The statement recorded in the F.I.R. cannot be raised to a pedestal higher than that of a statement on oath. It does carry a presumption of truth but keeping in view our social conditions where oaths still carry a sanctity, it can be reasonably said that out of the two, the statement made on oath should be believed as the truthful statement particularly when the contradiction in the two is not something very material. Even the driver of the bus has not disputed that he was driving the bus at a speed of 50 kmph and did not slow down even on seeking an obstacle or a part of the road having been occupied by a standing truck. In the evening hours of winter season, i.e., around 6.00 p.m. in the month of January it gets almost dark and roads are usually busy with slow traffic. We fail to understand how the Tribunal assessed the speed of the motor cycle at 45/50 kmph while it was crossing the truck standing on the road although in the statement of PW4 Ralla Singh, it has been categorically stated on oath that the speed of the motor cycle was 28/30 kmph. Be that as it is, even if the motor cycle was at a little high speed, the driver of the bus had more responsibility towards the pedestrians and the light motor vehicles going on the road and should have been more careful, especially when he was carrying on his shoulders the responsibility of the lives of the bus passengers. The bus

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driver cannot be permitted to loose sight of the traffic conditions on the road. He is expected to take all precautions required to avoid the accident. He was expected to slow down on seeking the truck standing on the road especially in the evening when it was getting dark. The entire blame for the accident, by any stretch of imagination, cannot be put on the deceased motor-cyclist. The statement of PW4, Ralla Singh, made on oath acquires further credibility when no evidence has been produced by the respondents in rebuttal. Even the bus driver, respondent No.1, himself has not stepped into the witness-box to refute the claim of the appellants.

6. In view of the peculiar facts and circumstances and for the reasons recorded above, we are of the view that the appellants, on the basis of evidence which has come on record, have successfully proved that the accident was caused on account of rash and negligent driving of the bus driver, if not wholly, at least to the extent of 70 per cent."

23.A careful reading of the above decisions disclosed that the Supreme Court and High Court have considered that the statements before the Tribunal are made on solemn affirmation whereas the First Information Report is never lodged on solemn affirmation. Therefore the statement recorded in the F.I.R. cannot be raised to a pedestal higher than that of the statement on oath. The points argued only go to show that whether the delay was wanton or with a motive. From the exhibits, which are the documentary evidence in support of the claimant's case independently on the evidence of PW1 and PW2 as well as the evidence of the Doctor PW3, besides documentary evidence, namely Exhibits P1 to P7 on which the Tribunal has assessed independently, it is seen that the claim of compensation is based on the evidentiary values. Therefore, as held by the various decisions, the F.I.R. was lodged in a haste and the same cannot be a substitute for the evidence giving exhaustive version of the occurrence. The statements before the Tribunal are made on solemn affirmation, whereas the F.I.R. is never lodged on solemn affirmation, will have more value than F.I.R.

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24.For the reasons recorded above, it is seen on the record that it is proved that the accident was on account of rash and negligent driving of the driver of the van. Similar view has also been taken when a witness has denied a fact with respect to something recorded by a third person, by itself is not sufficient to disbelieve the witness, particularly when the scribe of the first information report has not been examined. The statement recorded in the F.I.R. cannot be raised to the pedestal higher than that of a statement on oath. It does not carry a presumption of truth but keeping in view of our social conditions where oaths still carry a sanctity it can be reasonably said that out of two statements made on oath should be believed as truthful statements particularly, when the contradiction in the two is not something very material.

25.The whole scheme of the Act in relation to the payment of compensation to the claimant is beneficial legislation and the intention of legislature is made more clear by the change of language from what was in Fatal Accidents Act 1855 and what is brought under Section 110-B of the 1939 Act. This is also visible through the provision of Section 168(1) under the Motor Vehicles Act 1988 and Section 92-A of 1939 Act which fixes the liability on the owner of the vehicle even on no fault. It provides where the death or permanent disablement of any person has resulted from an accident in spite of no fault of the owner of the vehicle, an amount of compensation fixed therein is payable to the claimant by such owner of the vehicle. Whenever there be two possible interpretations in such statue, then the one which subserves the object of legislation viz., benefit to the subject should be accepted.

26.It is also held in the decision reported in A.I.R. 1980 1354 that Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes.

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27.It is also the Supreme Court's view that the object of First Information Report from the point of view of the informant is to set the Criminal Law in motion. From the point of view of the investigating authorities, it is to obtain information about the alleged criminal activity so as to be able to take suitable steps for tracing and bringing to book the guilty party. The report does not constitute substantive evidence though it is important as conveying the earliest information about the occurrence. It can be used only as a previous statement for the purpose contemplated under the Act.

28.In the circumstance of the case the evidence and the statements of information of oath have given much credence to the conclusion of the Tribunal and the same was rightly considered by the Tribunal in fixing the negligence on the part of the driver and also the quantum fixed by the Tribunal with 12% interest is proper. Therefore, the decision arrived by the Tribunal is based on the evidence. Though there are certain technicalities raised on the F.I.R., the other aspects pointed out by the Tribunal have confirmed the negligence on the part of the driver. Accordingly, the negligence fixed by the Tribunal is confirmed. There is no reason to interfere with the Tribunal's order and the same is confirmed.

29.The next point for consideration is whether the quantum arrived by the Tribunal is proper or not. The deposition of the injured claimant, the evidence of PW2 and PW3, the disability certificate in exhibit P6, the hospital receipts in Ex.P2 series, wound certificate Ex.P1, discharge summary in Ex.P5 and Ex.P7, all prove that the claimant has suffered grievous injuries and fracture in the right knee and owing to the malunion of two bones, there was contusion of muscles and he has sustained reduction in the movement by 20 degree and that there is partial permanent disability of 35% (as per the exhibit P6 and P7) as certified by the Doctor, who was examined. The Medical Officer in cross-examination has confirmed the disability factor and it is stated that the claimant would not be affected while working in a sitting position. The Tribunal has assessed the quantum of permanent disability for a sum of Rs.30,000/- and for sufferings a sum of Rs.7,500/-, and towards medical expenses a sum of Rs.35,000/- as per Ex.P2. Altogether, the quantum arrived by the Tribunal is for a sum of Rs.71,500/-. On the side of the appellant, no documentary evidence was marked and the insurance company has no other documentary evidence to disprove the evidence of the claimant, based on which, the Tribunal has arrived the quantum. On going through the assessment made by the Tribunal in respect of 35% of disability and the medical expenses

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based on the evidence, it cannot be considered that the Tribunal is improper in arriving the quantum and therefore there is no reason to interfere with the findings of the Tribunal. In the absence of contrary evidence to disbelieve the proper assessment made by the Tribunal, I have no hesitation to dismiss the appeal and confirm the award passed by the Tribunal and accordingly, the award passed by the Tribunal is confirmed and the appeal is dismissed. There is no order as to costs.

mvk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Registrar,
Court of Small Causes,
Chennai.

2. The IV Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal)
Madras.

+ 1 cc to Mr.S. Manohar, Advocate SR No.23975

+ 1 cc to Mr.V. Mohan Choudary, Advocate SR No.23966

GG(CO)
SR/15.6.2006

C.M.A.No.114 of 1998

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